IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

CRL.A.No. 790 of 2006()

AGAINST THE JUDGEMENT IN CRLP.203/2006 Dated 03/04/2006
STC.6422/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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APPELLANT: COMPLAINANT

A.E.PARAMESWARAN, S/O.LATE
A.E.NARAYANAN NAMBOODIRI, AGED 27 YEARS,
TEACHER, RESIDING AT EDAYATH ILLAM,
P.O.NARATH, KANNUR DISTRICT.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS: ACCUSED

CHERIYANDY BABU, S/O.LATE M.K.KANNAN,
AGED 35 YEARS, DRIVER, RESIDING AT PREMA NIVAS,
NARATH P.O., KANNUR.

BY ADV. SRI.B.RADHAKRISHNA PILLAI
SRI.P.U.SHAILAJAN
SRI.R.JYOTHIKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

Crl.A.790/2006 (A)

Dated this the 9th day of February, 2007

JUDGMENT

The complainant is the appellant. He preferred a complaint, under Section 138 of the Negotiable Instruments Act, in short 'the Act', before the Judicial Magistrate of First Class-II, Kannur. It was dismissed through the impugned order dated 9.11.2005 by the Court below, on the ground that the complainant and his counsel were absent. Hence this appeal, after obtaining special leave.

2. The counsel for the appellant submits that the case before the Court below, was adjourned through notification and the appointed date was noted wrongly by the clerk of the advocate. Therefore, the counsel and the complainant could not be present on that day.

3. After considering the materials on record, I find it necessary to give an opportunity to both sides to appear before the Court below and adduce evidence to

establish their respective contentions.

4. In the above facts situation, I set aside the impugned order dated 9.11.2005 and restore S.T.C.No.6422/2004 to the file of the Judicial Magistrate of First Class-II, Kannur. The learned Magistrate shall dispose of the same at the earliest, in any case within three months from the date of appearance of the parties before that Court.

5. The parties shall appear before the Court below on 13.3.2007.

The appeal is allowed as above.

J.M.JAMES
JUDGE

mrcs